



Legal Memorandum by the Pontis Foundation's Institute for Civic Diplomacy

Anti-Revolution Legislation in Belarus: State is Good, Non-State is Illegal

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I. Introduction

Before the upcoming presidential elections in Belarus scheduled for March 19, 2006, the Belarusian authorities are about to conclude their one year long lawmaking efforts to prevent any popular protest by criminalizing its own citizens due to different political opinion. This legal memorandum prepared by staff lawyer of the Pontis Foundation's Institute for Civic Diplomacy analyzes the comprehensive legal package became known as "anti-revolution" legislation including the following legal acts listed in chronological order:

- Presidential Decree No. 3 adopted March 9, 2005 on Some Measures against Human Trafficking
- Law on Counteraction to Extremism¹
- Law on Some Changes And Amendments into the Criminal Code Increasing Responsibility for Crimes Against Individuals and State Security²
- Law on Changes and Amendments Into Some Legal Acts of the Republic of Bealrus On Some Issues of Suppressing the Financing of Terrorism³
- Law On Changes Into Presidential Decrees On Some Measures of Human Traficking
- Law On Fight Against Corruption

II. Summary of Conclusions

With the new "anti-revolution" legislation the Belarusian authorities seek to seize the activity of democratic forces and immobilize citizens making them criminals, limit information about in-country situation to international community, and threaten international organizations with criminal responsibility for the support of the activity of democratic forces including political parties and civil society.

Adoption of this draft legislation was commented by high-ranked Belarusian officials labeling foreign organizations supporting Belarusian opposition as "terrorist"⁴ and stated the "need to

¹ Закон Республики Беларусь «О противодействии экстремизму» (so far exists as a law draft).

² Закон Республики Беларусь «О внесении дополнений и изменений в некоторые законодательные акты Республики Беларусь по вопросу усиления ответственности за деяния, направленные против человека и общественной безопасности». Adopted on December 15, 2005, Number 71-Z

³ Закон Республики Беларусь «Об изменениях и дополнениях в ряд нормативно-правовых актов Республики Беларусь по некоторым вопросам борьбы с финансированием террористической деятельности» (so far exists as a law draft).

⁴ On December 12, Chair Deputy of KGB Victor Vegera commented that foreign organizations conducted activity for the preparation of young people for participation at mass public actions – he told that for this purpose

prevent all destructive forces from using electoral campaign for the violent seizure of power, as it happened in Georgia, Ukraine and Kyrgyzstan“.⁵ The Belarusian administration sought to avoid publicity during the process of drafting and parliamentary hearings on the adoption of this new legislation, thus violating its own laws.⁶ Citizens had no access to the texts of draft laws⁷, only to commentaries to these texts published in the media.

The international community should recognize that the toughest political paragraphs in Belarus are being officially justified by international efforts to fight against human trafficking and terrorism. Most importantly, by passing the new laws the Belarusian regime has changed its policy toward the democratic opposition and civil society. Until now the regime has tried to eliminate most sources of opposition politically. However, the new legislation shifts political elimination into a criminal one. While the non-state sector was “bad” until now, from now it will be made illegal.

III. Detailed Legal Analyses

Criminal Code: ⁸

On November 23, 2005 the draft law on changes to the Criminal Code toughening responsibility for crimes against individuals and state security was introduced to the both houses of the parliament by KGB head Stepan Sukhorenko urging fast adoption “due to upcoming presidential elections”.

Changes were marked by Lukashenka as urgent, which meant that the parliament had to adopt the legislation by the end of the session. On December 2 the law was approved by the lower chamber of the parliament, on December 8 the upper parliament chamber unanimously adopted the changes. Within five days (though the exact date was not made public) the law draft was passed to the president for signing. The law was officially published in the National Registry of Legal Acts of the Republic of Belarus on December 20 - Lukashenka signed it secretly 5 days before as there was no official information about this act in the press. The law enters into force in ten days after its official publication, i.e. on December 30, 2005.

Changes to the Criminal Code in general include a number of clauses for the restriction of activity of NGOs and public initiatives; preparation of, and involvement in, street actions and financing of such activity; and set forth criminal punishment for the provision of alternative information about in-country situation to the international community. In comparison with previous version of the Criminal Code changes provide longer terms of imprisonment or

foreign organizations organized special terrorist camps in countries-neighbors of Belarus and funded similar activity.

⁵ Statement of KGB Chairman Stepan Sukhorenko at the presentation of changes to the Criminal Code for Belarusian parliament; <http://pravo.by/showtext.asp?1133517933269>

⁶ According to Art.43 of the Law on Normative Acts of the Republic of Belarus, the law-making process must be given due publicity, and plans for law-drafting must be available to the public and all interested organizations

⁷ These laws were neither included in the updates for legal database, nor published on government web-pages or included in the section “Draft Laws” on the Official National Legal Portal www.pravo.by

⁸ Official text of the law draft was published on December 19, 2006 at <http://pravo.by/kbdpz/text.asp?RN=2005112001>

additional confiscation of property for crimes against individuals, state security and state administration

Importantly, the wording of most of the new clauses was made vague to allow each particular situation to be interpreted by a judge's discretion. This allows using the new legislation against non-state sector since Belarusian courts have long practice interpreting „non-state cases“ as the administration wishes even if this contradicts to the law.

New provisions:

Article 193 providing responsibility to the leaders of political parties, NGOs and religious organizations for impediment to the implementation of state, public and family duties by citizens -- previously, this article used to be of a clear anti-extremism character and provided responsibility for violent activity of organizations of any type, or activity which violated rights, freedoms and legal interests of citizens. The new version of this article additionally provides responsibility (up to two years of imprisonment) to the leaders or founders of political parties, NGOs or religious organizations for the impediment to the implementation of state, public and family duties by citizens.

Thus, leaders of any political party or an NGO may face criminal responsibility, if members of this party have been involved in activity, which may be considered as impediment to the implementation of state or public interest (e.g. any street action or protest). Law-makers considered political parties and NGOs extremely dangerous subjects that could affect a wide range of aspects of social life – even impede to the performance of “family duties” by citizens, while the real meaning of “family duties” yet to be revealed by the court. Supposedly this article could be used to prevent door-to-door activity of party or NGO members.

Article 193.1 toughening responsibility for activity on behalf of unregistered organizations -- the new article 193.1 which provides criminal responsibility of up to two years of imprisonment for participation in activity of a political party, an NGO or a foundation, which has been not registered, liquidated, or whose activity has been terminated by court decision. Before, activity on behalf of unregistered organizations was subject to administrative - not criminal - punishment. Since NGOs have been liquidated by the court even for a minor violation of bookkeeping rules, and it is impossible to register any new organization, most of Belarusian NGOs are working without proper registration. Thus, this article makes criminals out of significant majority of civil society. Additionally, in case activities of political parties are terminated (which by legal means cannot be achieved before elections, but can be shortly after), most of the active party members would also face criminal responsibility. Thus, by introducing criminal punishment for participation in unregistered initiatives, the state seeks to prevent citizens from participation in the activity of the non-state sector and to immobilize current activists.

Article 293 and Article 342⁹ criminalizing training or other preparations for, and active participation in, group actions or gross violations of social order, and equally, financing of, or other material assistance to, such actions – following the amendments, any organization of demonstrations as well as conferences, youth summer camps or meetings with a democratic message, or any meetings of party activists could be considered as preparation

⁹ Article 342 is a known political clause providing criminal responsibility for the organization or active participation in demonstrations – it was introduced last year, and the state has already applied it against opposition leaders Nikolaj Statkevich, Pavel Severinets and Andrej Klimov, who received several years of imprisonment for organization of demonstrations in 2004-2005.

for participation in group action. Equally, if the any organization – even a foreign one - based in Belarus would finance any public activity of pro-democratic character or provide equipment for that, administration may try to apply criminal responsibility under this article against such organization.

Article 361 forbidding calls for seizure of state power -- Before this article used to forbid „calls for *violent* seizure of state power“, the new change basically bans messages (of political parties) for changing current state administration. It also provides responsibility for other activity, which could damage the internal security of Belarus, its sovereignty or territorial integrity or distribution of materials containing such calls. Moreover, Part 2 of Article 361 bans calls or exhortations for international organizations to commit acts intended to damage the internal security of Belarus, its sovereignty or territorial integrity or distribution of materials containing such calls. Violators will face up to three years in prison, and up to five years, if the calls are distributed through the mass media.

In current Belarusian situation, any appeal to internal or external subjects for the assessment of situation or for public hearings (on the fact of political disappearances, electoral legislation, and conformance of Belarusian legal rules with international law) may be considered as such call. This provision significantly limits possibilities of Belarusian citizens to appeal to the international bodies in connection with violation of their right inside Belarus.

Article 369.1 providing responsibility for the discreditation of the Republic of Belarus -- this new article bans deliberate provision to an international organization or a foreign state of false information about political, economic or social situation in Belarus and legal status of its citizens. This provision sets overall restrictions of the freedom of speech in Belarus: any public expression of opinion, speech or printed material with information on situation in Belarus (information on human rights, economic, social situation, opinion polls, etc.) may be criminally punishable. This article is expected to be used against journalists including the foreign press.

Law on Counteraction to Extremism¹⁰:

On October 27, 2005 the draft law was adopted by the lower chamber of the Belarusian parliament and further approved by the upper chamber of the parliament. The law set forth establishment of a “super structure”, which would coordinate activity of the agencies of law enforcement, state security and prosecution. The law does not specify who will oversee this structure. During the elections such structure would be able to provide necessary pressure on state officials and “help” electoral commissions in counting votes.

In case the administration considers an NGO or a political party as extremist, based on the new law, officials of the Ministry of Justice or Prosecutor’s Office would have a right to terminate activity of this NGO or political party. Thus, state agencies, avoiding the court, will have authority to decide on the termination of activity of non-state structures.

The law allows prevention of the editing and dissemination of materials of “extremist” character. Such information materials can be withdrawn and, after the court recognized them as extremist, destroyed. This gives the administration even more credentials to prevent dissemination of alternative printed materials.

¹⁰ Russian version of the official text of the law draft available online at <http://pravo.by/kbdpz/text.asp?RN=2004005001>

Anti-Terrorist Law¹¹:

On December 14, 2005 the parliament passed a bill toughening punishment for those sponsoring terrorism. According to the new bill those who provide or raise funds for the purpose of terrorist activity will face from 8 to 20 years in prison (10 to 25 years if this activity was organized by an official or by a person who has earlier committed crimes against peace, public safety or state security), along with confiscation of property. The decision whether a certain organization is terrorist will be taken by the Supreme Court of the Republic of Belarus. In case an international organization is recognized "terrorist" by the Supreme Court, its activity on the territory of Belarus will be banned, its representation office shut down, and property confiscated. This law has been adopted for the implementation of international obligations of Belarus under the 1999 Convention for the Suppression of the Financing of Terrorism. According to recent statements of KGB officials this law can be possibly applied against individuals or organizations (Belarusian or foreign) on the territory of Belarus, suspected by states in providing money for the opposition activity.

Anti-Trafficking Legislation:

On March 9, 2005 Lukashenka issued the Decree on Some Measures against Human Trafficking, which placed new, tight restrictions on foreign adoption of Belarusian children, work of modeling and wedding firms, on employment agencies and foreign travel of students. In addition, on December 14, 2005 the Belarusian parliament in the first hearing passed amendments to the legislation that would crack down on Internet dating and online spouse searches¹².

According to authorities these measures are intended to help halt human trafficking in Belarus. The new legislation would place new restrictions on organizations that promote dating or that help match potential suitors with spouses, particularly via the Internet. The bill also touches on the travel of Belarusian students. It would require Belarusian students seeking to study abroad to receive written permission from the Ministry of Education if the study is longer than 30 days. Foreign companies seeking to hire Belarusian students for summer jobs also would need approval from the Ministry of International Affairs. This is one more step in restriction of foreign travel, as well as internet communication for Belarusians.

Law on the Suppression of Corruption¹³:

The Belarusian Parliament on December 15, 2005 approved an anticorruption bill that tightens state control over the activity of state officials and their family members. In conditions of electoral campaign, the state seeks to fully control officials to avoid possible flow of recourses and development of the situation according to the Ukrainian scenario. The bill would enlarge the list of those who can be prosecuted for corruption by adding foreign citizens, presidential candidates, and people who are not civil servants but serve public needs. Government officials would be banned from opening and keeping accounts with foreign banks and fulfilling orders coming from parties and nongovernmental organizations. The bill would also require officials and their family members to file annual income and property statements and notify the tax authorities about the sale or purchase of property worth more than \$27,000.

¹¹ Russian version of the official text of the law draft available online at <http://pravo.by/kbdpz/text.asp?RN=2005028001>

¹² The full text of the draft law is not available yet, source for the information (in Russian) <http://afn.by/news/view.asp?newsid=68607>

¹³ The full text of the draft law is not available yet, source for the information (in Russian) <http://charter97.org/bel/news/2005/12/15/palatka>